

REMARKS/ARGUMENTS

Restriction

Restriction to one of the following inventions has been required under 35 USC 121:

I. Claims 1 and 2, drawn to a biopolymer marker, classified in class 514, subclass 13.

II. Claims 3-9, drawn to a method for evidencing and categorizing at least one disease state, classified in class 424, subclass 530.

III. Claims 10-32, drawn to a diagnostic kit for determining the presence of the biopolymer marker, and to antibodies that bind to the biopolymer marker, classified in class 436, subclass 501 and class 530, subclass 387.9.

IV. Claims 33-35, drawn to a method for identifying therapeutic avenues related to a disease state, and a method of regulating a disease state, classified in class 424, subclass 130.1.

Election

Applicants herein elect, without traverse, Group I (claims 1 and 2, as drawn to a biopolymer marker) for prosecution on the merits.

Claim Status/Support for Amendments

Claim 1 has been amended. Claims 2-35 have been cancelled. New claims 36-43 have been added. Claims 1 and 36-43 remain pending in the instant application.

No new matter has been added by the amendments to the specification.

The disclosure of prior art, PCT/EP97/04396, at page 4 has been amended to correct a typographical error in the international application number. The corresponding international publication number has also been added.

A protocol in the experimental section of the detailed description has been amended to properly identify the trademark SEPHAROSE using capitalization.

The abstract has been amended to remove the legal phraseology ("said").

No new matter has been added by the amendments to claim 1. Claim 1 has been amended to clearly recite SEQ ID NO:1 as a diagnostic marker for myocardial infarction, thus incorporating

subject matter of cancelled claim 2. Claim 1 has also been amended to clarify that the claimed peptide (SEQ ID NO:1) has been isolated from its naturally occurring state. The steps of the method of the claimed invention indicate that the peptide is isolated; see also page 29, lines 6-10 and page 31, lines 8-11 of the instant specification for support.

No new matter has been added to the specification by the addition of new claims 36-43. The subject matter of new claims 36-43 corresponds to the subject matter of cancelled claims 2-35. The new claims find basis in the original disclosure at page 12, lines 2-12 and page 17, lines 7-14. The method of new claim 36 is described in detail at pages 20-27. Page 28, lines 9-15 (also page 31, line 21 to page 32, line 5) refer to the use of various types of samples. Page 11, lines 1-9 discuss the use of unfractionated samples and tissue samples. Page 20, lines 2-6 refer specifically to the use of SELDI MS techniques in the methods of the instant invention. Page 26, line 20 indicates that serum samples were taken from patients (human) and Figure 1 shows a table disclosing data obtained from patients. Page 18, lines 5-7 disclose kits contemplated for use with the biopolymer marker of the instant invention. Page 32, line 9 to page 33, line 2 describes the use of an immobilized antibody and a labeled antibody.

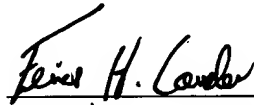
Request for Rejoining of Claims

Considering that claims 36-43 are limited to the use of an isolated biopolymer marker consisting of SEQ ID NO:1, a search of these claims would encompass this specific biopolymer marker. The instant application is related in claim format to several other applications, both pending and issued, of which serial number 09/846,352 is exemplary. In an effort to maintain equivalent scope in all of these applications, Applicants respectfully request that the Examiner consider rejoining claims 36-43 in the instant application under the decision in *In re Ochiai* (MPEP 2116.01) with claim 1 of the elected invention, upon the Examiner's determination that the claim of the elected invention is allowable and in light of the overlapping search. If the biopolymer marker consisting of SEQ ID NO:1 is found to be novel, methods and kits limited to its use should also be found novel.

CONCLUSION

Now that applicants have fully responded to the Office Action mailed on August 9, 2004, an examination on the merits is respectfully requested.

Respectfully submitted,



Ferris H. Lander
Registration # 43,377

McHale & Slavin, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33410
(561) 625-6575 (Voice)
(561) 625-6572 (Fax)

F:\2100-2199\2132 -Syn-X\2132_000036 - Marker 1518\Amendments\2132_036_RR.wpd